Chairman Genachowski and whomever this may concern at the FCC,

In response to recent news alerts that you might pretend to implement President Obama's broadband agenda to keep the Internet open and push for expanded competitive, innovative and affordable broadband access I've now emailed you and Commissioner Clyburn in addition to making repeated public filings with the agency in recent days -- filed comments before April 26th and am still filing because I feel this is a vital issue. I've also submitted comments through the Share Your Story feature on Broadband.gov, sent President Obama comments urging his unwavering support to continue on these matters of preserving the Open Internet and expanding broadband access by posting on The White House Facebook page and posting comments to The White House's Twitter feed.

I now submit an article about FCC jurisdiction issues and call on the FCC again to act. I have stated on Net Neutrality the FCC cannot be neutral. I have submitted comments urging you not to believe lies by U.S. telecom companies on the state of broadband as U.S. Broadband is worse than Broadband in Europe where they have more wholesale open access and Net Neutrality's future is safer there. Here is the article I want to share with you!

The Comcast v. FCC decision has called into question the Commission?s authority to act in the broadband arena. But in the debate over what the FCC?s next step should be, it seems that many have chosen to ignore history, describing as ?radical? the legal framework for innovation and competition that Congress established for our nation?s two-way communications networks.
The legislative process is designed to produce laws that are flexible, that are grounded in bedrock principle, and that withstand the test of time. Our Communications Act is guided by the principles of universal service, non-discrimination, interconnection, competition and reasoned deregulation. These principles, through the framework of the 1996 Act, were intended to foster the development of a robust, advanced and competitive two-way communications market -- regardless of changes in technologies. But because of flaws in the implementation of the law, not in the law itself, some of the goals of the Communications Act have yet to be achieved, and the principles themselves are now in jeopardy.
The FCC ?Broke? the Law
Two-way broadband transmission networks belong in Title II or ?telecommunications services.? That?s where Congress put them and intended for them to stay. Congress recognized that as competition develops, reasoned deregulation is appropriate; so it included in the Communications Act a provision, Section 10, which allows the Commission to forbear from applying any regulation to carriers. This is the path of reasoned deregulation chosen by Congress and put into law.
FCC Chairman Michael Powell chose a different path to deregulation -- one that involved sometimes metaphysical-like definitional interpretations of legal classifications. Chairman Powell, and later Chairman Martin, felt that they could follow this path to deregulation and still preserve the Commission?s ability to act on issues like universal service, non-discrimination, interconnection and

competition. But since the DC Circuit?s decision, the legal reasoning Powell and Martin relied on has proven to be unworkable. Both chairmen made errors that are now inhibiting the Commission?s activities in key areas that Congress clearly placed under the FCC?s authority, such as universal service for broadband networks.

Powell and Martin?s legal interpretation effectively ?broke? the law -- making it unworkable. In pursuing deregulation in a manner not laid out by Congress, as Justice Scalia put it in the Brand X decision, ?the Commission has attempted to establish a whole new regime of non-regulation? through an implausible reading of the statute, and has thus exceeded the authority given it by Congress.?

What Comcast v. FCC Means for Universal Service Reform

So the FCC is now at a crossroads, where it finds one legal framework called into question and the framework established by Congress waiting to be re-embraced. The notion now promoted by some, that ?reclassification? would be a return to ?century-old rules made for railroads and Ma Bell phone monopolies? is simply incorrect. Reclassification would restore the framework that Congress adopted for all two-way communications networks in 1996, a framework that today still applies to all the high-capacity data lines in the very competitive enterprise broadband market.

Reclassification, followed by Section 10-based forbearance, will preserve the status quo deregulatory approach, but will put the Commission?s plans for universal service and consumer protection back on firm legal ground. Reclassification will simply bring the Commission?s rules back into harmony with the law, and is justified by current realities that make Chairman Powell?s original 2002 decision inappropriate for today?s broadband marketplace.

But make no mistake: The Commission?s universal service reform plans are in legal limbo because of the past FCC classification decisions. Free Press is a strong supporter of an efficient and modernized USF, and we have for years argued that the Commission could carry out this task through the use of Title I authority. But this was always a supposition resting upon the untested strength of the Powell/Martin Title I legal theory. That door is now shut.

Next Steps for the FCC: Reclassify

Though some may feel that the Communications Act is outdated, the fact is Congress overhauled the law in 1996 with an eye toward competition and technological convergence. Title II is not a framework for monopolies offering telephone service, but for competition in two-way communications networks, including advanced broadband networks.

Furthermore, the notion that the universal service, non-discrimination, interconnection, competition and reasoned deregulation principles that are at the heart of basic Title II common carriage are somehow outdated ignores the plain truth that many of our law?s basic principles are hundreds of years old. From the ideas embodied in the Constitution to the ideas embodied in common law, basic principles withstand the test of time. By enacting the 1996 Act, Congress certainly understood that non-discrimination and interconnection are the keys to having a robust two-way communications infrastructure, regardless of changes in technologies.

We trust in the law, and are certain that the deliberative wisdom of Congress, if once again properly

implemented, will bring about the right outcomes.

-- This was excerpted from testimony delivered by S. Derek Turner on April 21, 2010, to the United States House of Representatives Committee on Energy and Commerce Subcommittee on Communications, Technology and the Internet

Full Testimony: http://www.freepress.net/files/Turner_April_21_2010_NBP_House_Testimony.pdf